



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

The Secretary-General

Brussels, 06.10.2015  
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***By registered mail:***

Arun DOHLE  
Mr A Dohle  
Viktoriastr. 46  
D-52066 Aachen  
Germany

***Copy by email:***

ask+request-2117-  
6f40d3dd@asktheeu.org

**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT  
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2015/3601**

Dear Mr Dohle,

I refer to your letter, registered on 27 August 2015, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> ("Regulation 1049/2001").

**1. SCOPE OF YOUR REQUEST**

In your initial application of 16 June 2015, addressed to the Directorate-General for Justice and Consumers (DG JUST), you requested access to *all reports and other documents/correspondence related to allegations with regard to the adoption procedures in Bulgaria*.

You referred in this context to the question by MEPs Kati Piri and Sophia in 't Veld on corruption in child adoption procedures in Bulgaria and to the reply provided by Vice-President Timmermans on behalf of the Commission stating that *the Commission is aware of some reports and allegations with regard to adoption procedure in Bulgaria*.

<sup>1</sup> Official Journal L 345 of 29.12.2001, p. 94.

<sup>2</sup> Official Journal L 145 of 31.5.2001, p. 43.

The Commission has identified the following documents as falling under the scope of your request:

- Commission Decision of 13/XII/2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime, Brussels 13/12/2006, C (2006) 6570 final (Public document) (document 1);
- Report from the Commission to the European Parliament and the Council on progress in Bulgaria under the Co-operation and Verification Mechanism (SWD(2015) 9 final) (Public document) (document 2);
- The letter from a Bulgarian citizen regarding the alleged trade of orphans in Bulgaria, dated 12 August 2014, ARES(2014)2667570 (document 3);
- The Commission's reply to the above-mentioned letter dated 9 September 2014, ARES(2014)2974552 (document 4).

In its initial reply of 29 July 2015, DG JUST sent you the first two documents, which are public documents, and granted wide partial access (subject to redaction of personal data only) to documents 3 and 4.

Through your confirmatory application you question why DG JUST has sent you documents relating to the Co-operation and Verification Mechanism (CVM), when it was clear from the reply provided by Vice-President Timmermans that the Commission does not monitor corruption in adoption procedures in the context of the CVM. You reiterate that you wish to obtain access to the reports/allegations with regard to adoption procedures in Bulgaria, mentioned in Vice-President Timmermans' reply and cited above.

Against this background, the Commission has carried out a renewed, thorough search for the documents requested. Following this renewed search, I would like to inform you that the Commission has identified the five documents listed below as falling within the scope of your request. These documents form part of the Commission's closed CHAP<sup>3</sup> case file under reference (2013)1977, concerning alleged child trafficking and illegal adoption in Bulgaria:

1. Complaint on an alleged breach of EU law (with annexes), received on 13 May 2013;
2. Supplement (additional submissions) relating to the above complaint (with annexes), received on 15 July 2013;
3. Letter to the Commission from the Association of Child Development 'Article 24', dated 23 September 2013;

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<sup>3</sup> CHAP stands for Complaints Handling – *Accueil des Plaignants*

4. Letter from the Commission of 15 May 2014;
5. Letter from the Commission of 14 August 2014.

The Commission has carried out consultations with the complainant in the above-mentioned CHAP complaint as to the possible disclosure of the documents originating from him. The latter did not oppose their disclosure.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, I am pleased to inform you that access is granted to all documents relating to the above-mentioned closed case file, registered in CHAP, subject to the redaction of personal data only, for the reasons set out below.

### **Protection of privacy and the integrity of the individual**

Article 4(1)(b) of Regulation 1049/2001 provides that access to documents is refused where disclosure would undermine *the protection of privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data*.

All of the documents newly identified in the context of CHAP file (2013)1977 contain names, addresses and/or functions of natural persons, as well as other information that could make the persons concerned identifiable.

In its judgment in the *Bavarian Lager* case, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001<sup>4</sup> (hereafter 'Data Protection Regulation') becomes fully applicable<sup>5</sup>.

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<sup>4</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8 of 12 January 2001, page 1.

<sup>5</sup> Judgment of the Court of Justice of 29 June 2010 in Case C-28/08P, *Commission v Bavarian Lager*, paragraph 63.

Article 2(a) of the Data Protection Regulation provides that '*personal data*' shall mean *any information relating to an identified or identifiable person [...]*. According to the Court of Justice, *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life"*<sup>6</sup>. The names<sup>7</sup> of the persons concerned as well as their addresses, functions and other information, such as date and place of birth (from which their identity can be deduced), undoubtedly constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation.

Pursuant to Article 8(b) of Regulation 45/2001, the Commission can only transmit personal data to a recipient subject to Directive 95/46/EC if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. Those two conditions are cumulative.<sup>8</sup>

I note that in your confirmatory application you do not appear to contest the redaction of personal data, withheld from documents granted to you at the initial level. Nor have you put forward arguments substantiating a need to obtain access to the personal data concerned.

In addition, based on the information at my disposal, there is no reason to think that the legitimate rights of the individuals concerned would not be prejudiced by the transfer of their personal data.

Therefore, in accordance with Article 4(1)(b) of Regulation 1049/2001, access to the personal data contained in the said documents has to be refused, as the release thereof would prejudice the privacy and integrity of the individuals concerned.

### **3. NO OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

Article 4(1)(b) of Regulation 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

### **4. PARTIAL ACCESS**

In accordance with Article 4(6) of Regulation 1049/2001, I have considered the possibility of granting partial access to the documents in question and I am pleased to inform you that wide partial access (subject to redaction of personal data only) is granted.

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<sup>6</sup> Judgment of the Court of Justice of 20 May 2003 in Joined Cases C-465/00, C-138/01 and C-139/01, *Rechnungshof v Österreichischer Rundfunk and Others*, paragraph 73.

<sup>7</sup> Judgment of the Court of Justice of 29 June 2010 in Case C-28/08P, *Commission v Bavarian Lager*, paragraph 68.

<sup>8</sup> *Idem*, paragraphs 77 and 78.

## **5. MEANS OF REDRESS**

Finally, I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a horizontal line and a small loop at the end.

Alexander Italianer

Enclosures: Documents 1-5 relating to the closed CHAP file (2013)1977